

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6490 of 1997

with

SPECIAL CIVIL APPLICATION No 4513 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not? Yes
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No
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In Spl.C.A.No.6490 of 1997 :-

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NARANBHAI S SHOLAKIA C/O ST WORKERS UNION

In Spl.C.A.No.4513 of 1997 :-

G S R T CORPORATION

Versus

RASHID ALI HUSSAIN MIYA BUKHARI

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Appearance:

1. Special Civil Application No. 6490 of 1997

MR HS MUNSHAW for Petitioners  
MR IS SUPEHIA for Respondent No. 1

2. Special Civil Application No 4513 of 1997

MR HS MUNSHAW for Petitioners  
MR IS SUPEHIA for Respondent No. 1

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CORAM : MR.JUSTICE H.L.GOKHALE  
Date of decision: 24/09/97

COMMON ORAL JUDGEMENT

1. In both these matters, Mr. Munshaw appears for the petitioner Gujarat State Road Transport Corporation and Mr. Supehia for the respondent workmen. Since both the matters are involving a common law point, they are decided together.

2. In Special Civil Application No. 4513 of 1997, the matter had come up earlier for hearing before Ms.Justice R.M.Doshit, J. who admitted the petition and granted interim relief on 27/6/1997 but on the respondents pointing out that they had their caveat, Ms.Doshit,J. cancelled that order of admission and interim relief by her subsequent order dt. 18/7/1997 passed below Civil Application No. 6256 of 1997 taken out in Special Civil Application No.4513 of 1997. The result therefore is that this matter also is now to be considered for admission.

3. Since both the matters involve interpretation of the concerned provisions regarding transfer of Trade Union representatives, Rule is issued on both the petitions. Rule is made returnable forthwith. Mr. Supehia has waived the service of Rule. Both the learned advocates have made their submissions.

4. It is an admitted position that as far as the Trade Union representatives are concerned, a special arrangement has been arrived at between the petitioner Gujarat State Road Transport Corporation and its Unions. It is recorded in Clause 96(3) of their governing settlement. That clause reads as follows:-

"Concessions for the Office Bearers of the State  
level recognized Unions :-

Both the Unions will furnish the name of one representative to the Administration for doing Union work at the Office, Workshop and Depot level. Job to be given to them will be decided after consultation with the Union and their transfer will be effected after consultation with the State level Union"

5. In Special Civil Application No. 4513 of 1997, a complaint was received against the respondent who is employed as Bus Conductor regarding some dishonesty in his functioning and on 1/8/1996, it is reported that he admitted the allegations made against him in writing. Thereafter, it was proposed that he should be transferred from his then place of work in Ahmedabad to Surat. That proposal/decision was arrived at at the State level Office at Ahmedabad on 21/8/1996. A consultation was offered to the Union concerned on 23/8/1996. The concerned Union gave in writing that it was opposing this transfer. Amongst others, it was stated that such incidents do occur in the service of a conductor and it is possible that the person concerned might have been involved mala fide. The officer concerned at the Division level made necessary noting on 23/8/1996 and recorded that the employee concerned and his representative were consulted and wrote to the Central Office to take necessary decision. It is the case of the S.T. Corporation that thereafter the respondent was relieved from Ahmedabad by effecting order dt. 21/8/1996 on 23/8/1996, whereas it is the case of the respondent employee that he had been relieved earlier on the very day.

6. In Special Civil Application No. 6490 of 1997, the facts are this-wise that the management decided to transfer the respondent workman who was working at Amreli to Bharuch and the decision was taken at the Head Office level on 21/25-3-1997. There is a Rojkam dt. 26/3/1997, wherein it is stated that a telephonic consultation was done with the Office Bearers of the Union situated at Ahmedabad on phone on. Thereafter only, the employee concerned has been relieved.

7. In Special Civil Application No. 4513 of 1997, on the respondent workman filing a complaint to the Industrial Tribunal at Ahmedabad being Complaint (IT) No. 99 of 1996, the learned Judge passed the order below Ex.2 therein on 15/5/1997 and held that there was no effective consultation, and therefore, directed the reinstatement

of the workman concerned. That order is challenged in Special Civil Application No. 4513 of 1997.

8. In Special Civil Application No. 6490 of 1997, a complaint was filed to the Industrial Tribunal at Ahmedabad, that complaint being (IT) No.58 of 1997 and the same was allowed by the order dt. 12th June, 1997 passed by the concerned Tribunal. The same is challenged in Special Civil Application No. 6490 of 1997.

9. Both the learned Tribunals have taken a view that the procedure followed by the petitioner Corporation is faulty and it cannot be said that there is any effective consultation. Mr. Munshaw, the learned advocate appearing for the petitioner Corporation submitted that in the facts of both the cases, it can be said that the effective consultation had taken place. In his view, although the transfer order is issued earlier from the Head Office, it is not implemented until discussion/deliberation takes place with the Union and Rojkam is made. He submitted that although the decision is of a prior date, it cannot be said that it is arrived at without consultation and he submitted that the decisions taken in both the cases, be maintained.

10. As against that, Mr. Supehia submitted that when a consultation is provided, it means that the decision itself has to wait till the consultation is done and he relies upon the judgment of the Supreme Court in the case of Union of India Vs. Sankalchand Sheth, particularly Para 39 thereof to contend that consultation means deliberation (XVIII G.L.R. 919).

11. In my view, the submission of Mr. Supehia is well made. If a decision is arrived at in advance and, subsequently consultation is offered, it means, showing lip sympathy to the provisions in the settlement. The management can arrive at a tentative proposal to transfer the concerned Union representative, but the actual decision has to be subsequent to the consultation and its decision must reflect that such a consultation was offered and the decision is arrived at thereafter (unless it is declined by the Union representative himself). In both the cases, it is clear that the management has not done so and therefore, the approach of the Industrial Tribunal cannot be faulted.

12. However, in the facts of Special Civil Application No. 4513 of 1997, it is seen that there was a serious allegation against the employee concerned. The Union was offered consultation and the Union has given in

writing as to wherever it had to say on the proposal to transfer. Thus the consultation could be said to be effective. An employee can certainly be transferred by the management under whatever are the rules and regulation governing such transfers. If this respondent was not a Union representative, he would have certainly been transferred. Merely because, he is an Union representative, he cannot be placed on a higher pedestal. The idea in giving protection to the Union representative is to see to it that he does not suffer because he is Union representative, but that does not mean that he should be put on a higher position than the other employees, who commit such a misconduct. In the facts of this case, therefore, I hold that the Tribunal was in error in interfering with the transfer of the particular respondent Union representative and order passed by the Industrial Tribunal below Ex. 2 in complaint (IT)No. 99/96 dt. 15/5/1997 is hereby quashed and set aside. Rule is made absolute accordingly. The petitioner Corporation will be at liberty to effect the transfer order. It is at the same time made clear that inasmuch as the order passed on 15/5/1997 was in operation till date, the respondent workman is entitled to the wages from 15/5/1997 till 24/9/1997. He would not be entitled to the wages from 23/8/1996 till 15/5/1997 since he had not joined on duty, nor was there any stay.

13. As far as Special Civil Application No. 6490 of 1997 is concerned, there are no such facts placed on the record of the petition. It appears that the Divisional Controller at Amreli had a telephonic discussion with the Union representative situated in Ahmedabad and thereafter immediately transfer order (which was issued earlier on 21st June, 1997), was brought into force. As stated above, this cannot be said to be compliance with the provisions, and therefore, I find no error in the order passed by the Industrial Tribunal in complaint (IT)No.58/97. Hence this petition is dismissed. Rule is discharged. In this case, also from the date of the transfer till date of the order of the Industrial Tribunal i.e. from 25/3/1997 to 12/6/1997, the workman will not be entitled to the wages since there was no stay, but from the date of the order of the Industrial Tribunal i.e. dt. 12th June, 1997, he will be entitled to the wages. The order will not prevent the management from holding consultation with the Union again (if the grounds for transfer persist) and then transfer the respondent workman. The parties are at liberty to act as per this order after expiry of two weeks from the date of receipt of the writ of this court. Writ to go down forthwith. Direct Service permitted.

